

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HASSAN BEY,

Plaintiff,

v.

E. HERNANDEZ,

Defendant.

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Civ. No. 18-3693 (FLW) (TJB)

MEMORANDUM AND ORDER

This matter was opened to the Court by the July 16, 2019, Report and Recommendation of U.S. Magistrate Judge Tonianne J. Bongiovanni, which recommended dismissing this action with prejudice under Federal Rule of Civil Procedure 41(b) due to the failure of plaintiff, Hassan Bey (“Plaintiff”), to prosecute his case or comply with Court orders. (ECF No. 17.) Under Federal Rule of Civil Procedure 72, a party has 14 days to “serve and file specific objections to the proposed findings and recommendations” of a magistrate judge. Fed. R. Civ. P. 72(b)(2). “If a party does not object timely to a magistrate judge’s report and recommendation, the party may lose its right to *de novo* review by the district court.” *EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017). Even if a party does not timely object, however, the district court must still give reasoned consideration to dispositive issues raised in a report and recommendation. *See id.*; *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987).

In this case, Plaintiff has not filed any objection to Judge Bongiovanni’s July 16, 2019, Report and Recommendation.¹ Federal Rule of Civil Procedure 41(b) specifically permits a

¹ Indeed, as noted by Judge Bongiovanni, it seems that Plaintiff was released from prison in April 2019, but has failed to update his address with the Court, as he is required to do under Local Civil Rule 10.1. Accordingly, the copy of the Report and Recommendation sent to Plaintiff’s last known address was returned as undeliverable. (*See* ECF No. 18.) I note that the Clerk may have re-sent the Report and Recommendation to a Hassan Bey presently incarcerated

district court to dismiss an action if the plaintiff fails to prosecute the case. Fed. R. Civ. P. 41(b).; *see also Iseley v. Bitner*, 216 F. App'x 252, 254–55 (3d Cir. 2007). Before, doing so, the court must balance six factors identified by the Court of Appeals for the Third Circuit in *Poulis v. State Farm Casualty Company*, 747 F.2d 863 (3d Cir. 1984):

(1) the extent of the *party's* personal *responsibility*; (2) the *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a *history* of dilatoriness; (4) whether the conduct of the party or the attorney was *willful* or in *bad faith*; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of *alternative sanctions*; and (6) the *meritoriousness* of the claim or defense.”

Id. at 868. Judge Bongiovanni’s Report and Recommendation gave thorough consideration to each of the *Poulis* factors and concluded that, on balance, these factors weighed in favor of dismissing the action with prejudice. (See ECF No. 17.) Having reviewed the Report and Recommendation, and for substantially the same reasons stated therein, the Court adopts Judge Bongiovanni’s Report and Recommendation and dismisses the action with prejudice.

THEREFORE, IT IS, on this 31st day of July 2019,

ORDERED that the Court adopts Judge Bongiovanni’s July 16, 2019, Report and Recommendation, (ECF No. 17); and it is further

ORDERED that Plaintiff’s Complaint is hereby DISMISSED WITH PREJUDICE based on Plaintiff’s failure to prosecute the action; and it is further

at Northern State Prison. (See Court Note (July 29, 2019).) According to the New Jersey Department of Corrections online “Offender Search,” however, Judge Bongiovanni was correct in concluding that records indicate that Plaintiff, Hassan Bey, SBI Number 000563565C, was released from South West State Prison on April 8, 2019. While the Offender Search website does list a Hassan Bey presently incarcerated at Northern State Prison, his SBI Number is listed as 000347412E, which does not match the SBI Number included on Plaintiff’s original filings in this action. (See, e.g., ECF No. 1-1 & 1-2.)

ORDERED that the Clerk of the Court shall CLOSE the file in this matter; and it is further

ORDERED that the Clerk of the Court shall serve this Order on Plaintiff at his last known address by regular U.S. mail.

/s/ Freda L. Wolfson
FREDA L. WOLFSON
U.S. Chief District Judge